

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RICHARD BAXTER HULL, BHARAT KUMAT,
FRANCOIS LLIRBAT, & GANG ZHOU

Application 09/251,998

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences on January 27, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being electronically returned to the examiner. The matters requiring attention prior to docketing are identified below.

The Examiner's Answer, mailed November 3, 2005, is defective, for it does not provide a list of references used in the rejection on appeal under the Heading "(8) Evidence Relied Upon", on page 3 of the Examiner's Answer. See the Manual of Patent Examiner Procedure (MPEP) §1207.02, page 1200-29. Appropriate correction is required.

In addition, it is noted that appellants timely filed a Reply Brief on December 27, 2005. There is no indication on the record, that the Reply Brief was considered. 37 C.F.R. 41.43 reads as follows:

§ 41.43 Examiner's response to reply brief.

(a)(1) After receipt of a reply brief in compliance with § 41.41, the primary examiner must acknowledge receipt and entry of the reply brief. In addition the primary examiner may withdraw the final rejection and reopen prosecution or may furnish a supplemental examiner's answer responding to any new issue raised in the reply brief.

(2) A supplemental examiner's answer responding to a reply brief may not include a new ground of rejection.

(b) If a supplemental examiner's answer is furnished by the examiner, appellant may file another reply brief under § 41.41 to any supplemental examiner's answer within two months from the date of the supplemental examiner's answer.

(c) Extensions of time under § 1.136(a) of this title for patent applications are not applicable to the time period set forth in this section. See § 1.136(b) of this title for extensions of time to reply for patent applications.

Appropriate correction is required.

Accordingly, it is

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ORDERED that the application is returned to the
Examiner:

1) to vacate the Examiner's Answer mailed November 17,
2005;

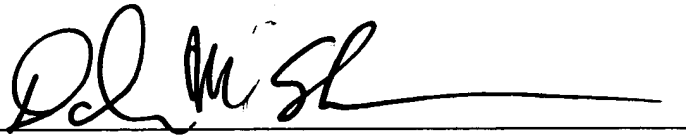
2) file a new Examiner's Answer, which include the
listing of prior art relied upon by the Examiner in the rejection
on appeal;

3) for a proper response to the Reply Brief filed
December 27, 2005;

4) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By:



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